

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO.2923/2007.

Jamuna Prasad and ors.

Vs.

Civil Judge (Jr.Div.) and Judicial Magistrate,
Karauli and ors.

Date of Order :

5/10/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Amit Gupta for the defendants-petitioners.

Shri L.L. Gupta for respondent No.1.

Shri Dharmendra Agrawal for plaintiff-respondents
No.2 and 3.

BY THE COURT:-

This writ petition has been filed against the order of the trial court dated 7/2/2007 whereby, application filed by the plaintiff-respondent No.2 under Order 8 Rule 1 CPC was allowed and the written statement filed by the defendants-petitioners was directed to be struck off from the record. This Court while issuing notices of the writ petition, stayed the operation of the impugned-order as a result of which, the proceedings in the trial court are not being carried out further.

Learned counsel for the petitioners argued that although the written-statement could have been filed within 90 days from the date of receipt of the summons but due to the stay order of this Court, they could not file the same within time and this reason has also been stated by them in their application for taking the written-statement on record. It was argued that summons were received by the defendants-petitioners on 21/8/2002, 26/8/2002 and 27/8/2002. Vakalatnama on their behalf was filed on 18/9/2002. The written-statement however could be filed on 17/1/2003. There was delay of only 39 days which was not deliberate but owing to the reason that there are number of defendants and joint written-statement was filed and in that process, some time passed. Thereafter, objections to the written-statement was filed by the plaintiff at the belated stage on 11/12/2004 but the trial court struck off the written statement filed by the defendants-petitioners and allowed the application filed by the plaintiff-respondents under Order 8 Rule 1 CPC by the impugned order dated 7/2/2007.

Learned counsel for the plaintiff-respondents opposed the writ petition and argued that the order passed by the trial court was perfectly valid and in accordance with the provisions of law. They further argued that the suit was filed way back in the year 2002 but it is still pending at the stage of the evidence of the plaintiff.

I have heard learned counsel for the parties and perused the material on record.

In view of the facts of the present case, when the written statement to the plaint was filed on 17/1/2003, the objection could have been filed immediately thereafter but it has been filed belatedly on 11/12/2004 and this fact ought to have been considered by the learned court below while striking off the written-statement of the defendants-petitioners from the record. Even the issues were framed on the basis of the pleadings of the parties.

In my considered view, the learned court below erred in allowing the application of the plaintiff-respondents filed under Order 8 Rule 1 CPC and striking off the written-statement of the defendants-petitioners from the record.

In the result, the writ petition is allowed. The impugned-order dated 7/2/2007 passed by the learned Civil Judge (Junior Division) and Judicial Magistrate, Karauli is quashed and set-aside. The trial court is directed to take the written-statement filed by the defendants-petitioners on record. It is impressed upon the trial court to expedite the trial of the civil suit and not to grant unnecessary adjournments to either of the parties.

(MOHAMMAD RAFIQ), J.

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